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THE RULE IN ELECTRICITY CASES AS TO SAFETY APPLIANCES.

A very interesting statement is made in an opinion by Springfield (Mo.) Court of Appeals in Melcher v. Freehold Inv. Co., 174 S. W. 455, regarding the obligation of an employer to protect the operators of his electric elevators.

The court deduces from obligation of highest degree of care imposed on those who use electricity that the rule declared by the Supreme Court of that state, and many other courts, that in cases of ordinary care a master, not being an insurer, is only bound to use reasonable care and precaution to furnish his servants with safe appliances, but not the newest and best, is not controlling, where a subtle and dangerous thing like electricity is used.

In this case there was evidence that plaintiff was an elevator boy in an office building. On a stormy night he entered the elevator for the purpose of going up, and in taking hold of the lever to start it he received a shock, from which he suffered serious injury. It was shown also that there was a device called a "lightning arrester," which, had it been on this elevator, would have been an absolute protection against this injury, it being the very best precaution against lightning known to the electrical profession. It was not, however, ordinarily used on office buildings or on a motor installation. Plaintiff had a verdict and it was affirmed on appeal.

It was said by Court of Apeals that: "The fact that defendant's evidence tended to show that others engaged in the same line of business, to-wit: operating office buildings, do not put lightning arresters on these buildings, does not furnish an unbending test of due care, where it is necessary to measure the highest degree of care. The cases cited by appellant laying down the rule that a defendant cannot be held negligent, where the evidence shows that he conformed to the ordinary usages and methods employed by those engaged in the same line of business are all cases where such defendant was only to be held to the exercise of ordinary care and not to the utmost or highest degree of care. One reason for this is that, in exercising ordinary care to make a place reasonably safe, a master does not have to use the latest and most approved appliances, so long as the appliances are reasonably safe, and in determining whether he has exercised ordinary care in making the place reasonably safe, his conduct is to be measured by the conduct of those engaged in the same line of business. But where the law places on a person the duty of exercising the highest practicable degree of care he must employ every well-known device and exert every well-known precautionary measure to fulfill his duty. His conduct, therefore, is not measured by what someone else does, but by what he or someone else should do in the particular situation, in order to bring himself up to the standard that the law fixes and requires."

The court thought this rule was recognized in Coin v. Lounge Co., 222 Mo. 488, 506, 121 S. W. 1, 25 L. R. A. (N. S.) 1179, 17 Ann. Cas. 788, but all we find there is that the rule was not condemned, and the case is far from an explicit announcement of the rule. We think, however, the rule is a very salutary one and gives concrete application to an expression frequently used by many courts in speaking of the rule governing those who handle or put employes in a situation, where are handled, electrical currents so potent in sudden and deadly effect. Card v. Gas & Elec. Co., 77 Wash. 564, 137 Pac. 1047; McClaugherty v. Elec. Co., (Or.) 140 Pac. 64; Yeager v. Edison Elec. Co., 242 Pa. 101, 88 Atl. 872; R. Co. v. Haden, 155 Ky. 283, 159 S. W. 792.

In an earlier Kentucky case the court spoke approvingly of a rule suggested in Thompson on Electricity, that corporations using electricity ought to be regarded as quasi-insurers, and said for itself that one was bound to use every protection accessible in behalf of his servants. Overall v. Electric L. Co., 20 Ky. L. R. 759, 47 S. W. 442.

In Mahan v. Street Railway, 189 Mass. 1, 75 N. E. 59, the evidence showed that plaintiff was injured by reason of failure of defendant to put up and maintain guard wires to prevent contact with other wires; that it was customary to use such guard wires, but they were not used in many important localities in the vicinity. The court said: "The defendant was operating cars in the public streets by the use of a highly dangerous agency. It was bound to know that other wires were or might be strung along the streets for various purposes and that persons would or might be employed to work upon them, and it was its duty in the exercise of reasonable care to adopt such precautions as were proper to prevent its own wires from coming in contact with the wires upon which such persons were or might be employed and injuring them."

Here there seems to be given little attention to the question of what other companies in the same line of business did.

In Crowe v. Nanticoke Light Company, 209 Pa. 580, 58 Atl. 1071, it was held error for the trial court to charge that an electric company was not bound to have "an equipment or plant containing the most modern and recent appliances, but only such as were in common and general use at that time for like purposes."

The expression of such a company being bound to the highest degree of care occurs very often, where there is no question of appliances and the duty to supply them, whether in customary use or not. We think the Missouri court and the other courts as above shown put into practical force the distinction between ordinary care and such care as governs the user of dangerous agency.

NOTES OF IMPORTANT DECISIONS

SALE—RESCISSION AS TO STOCK ON HONEST MISREPRESENTATION OF FACT AS TO CORPORATE PROPERTY.—The Supreme Court of Minnesota holds, in effect, that, if there is a purchase of a thing, say stock in a corporation, an honest misrepresentation by the seller of what its value is based upon offers ground for rescission in equity. Drake v. Fairmont Drain Tile Brick Co., 151 N. W. 914.

This as a principle of law may not well be disputed. See McGowan Co. v. Carlson, Wash., 139 Pac. 869; Grant v. Ledwidge, Ark., 160 S. W. 200. Especially if deceit is practiced.

But is there not some rule of caveat emptor as to the purchase of shares of stock honestly vended?

The facts in the Minnesota case supra shows that a corporation for the manufacture of vitrified drainage tiles was organized and its plant located on a tract of land supposed to have a clay deposit peculiarly adapted for such product. There were subscriptions for shares of stock and more than $100,000 was expended in construction of a factory. It turned out the clay was unsuitable and the corporation had to procure suitable clay from other places, some of it hauled a distance of 18 miles.

. Officers of defendant before this unsuitability was ascertained sold some of its stock to plaintiff, representing as they honestly believed, that the clay was all that was expected. Upon the contrary proving true, plaintiff sued for rescission.

The case, as reported, is scant, seemingly, of necessary recital of facts. For example, if plaintiff was an early subscriber and saw a factory going up upon the belief of investors, would he be allowed to lay by and await proof of a statement of this character however honestly and in whatever terms it is made, unless it expressly guarantees the truth of the statement?

The court appeals to the principle that a contract made upon honest misapprehension of a fact, which is the basis of contract, shows there was no meeting of minds and therefore no contract. But this principle is to be applied with a grain of allowance. If the representation is shown to be honest and acted on by promissor as believed in, and is in relation to a fact depending on judgment, without its being specifically stated that a test conclusive in its nature has been made, the promissor should be bound by his contract—especially as to such a matter as was involved

in this case, the proceeds of sale being expended in reliance on the truth of the statement, or, in other words, on defendant's judgment. As far as the particular case is concerned it seems to us there was error in reversing the lower court. It would seem there was considerable room for the inference of conclusive estoppel against plaintiff.

BENEFIT SOCIETIES—CHANGE IN BY-LAWS AS TO COMMISSION OF SUICIDE.—The Supreme Court of Minnesota holds, that extension of the period for decrease in amount of insurance from two to five years, where insured shall commit suicide, sane or insane, is binding on one who commits suicide while sane, where the contract provides that insured shall be bound by laws then in force or thereafter enacted, though such extension may not extend to one committing suicide when insane. Ledy v. Nat. Council K. and L. of Security, 151 N. W. 905.

The theory upon which this case goes is that while amendments of the laws of such an order are limited to details of management rather than to basic matters of conduct between it and members, yet suicide by one sane reasonably may be forbidden in the future.

The court deciding the principle contents itself greatly with the mere citation of authority. It said, however, that: "The reasons (for validity of amendment) are various. Attention is frequently called to the fact that, at common law, suicide was a crime which entailed forfeiture of property; that while the successful perpetrator is beyond the reach of the law, he commits an act which is malum in se and which the law tries to prevent by all the means in its power; that he has no moral, legal or other right to commit such an act; that the law cannot say that a provision which prevents him from fastening liability upon the association by his own criminal act voluntarily committed is unreasonable, and that such a provision not only invades no legal or vested right, but takes away a possible incentive to commit a heinous offense."

Such a clause as we cite appears to put suicide by one sane or insane on the same footing, and generally it might be thought, that if amendment cannot affect those already insured, so it should not affect those who commit suicide while sane. But the provision may be looked at as putting a limitation upon the right of recovery where a suicide is by an insane, and granting a right where he is sane. The basis of such right is in grace or favor, however, and thus may be circumscribed by amendment.

INVASION OF THE INSURANCE FIELD BY THE STATE BY WORKMEN'S COMPENSATION LAWS.

Just now there is a considerable inclination in public opinion towards state insurance of compensation for industrial injuries, owing to dissatisfaction with the casualty insurance companies on account of their high rates (actual or proposed) in the states which have recently enacted elective compensation laws.

In what follows I will present what, in the writer's opinion, are the principal objections to state insurance of compensation.

In Europe and the Colonies of Great Britain there are four principal forms of the law of compensation for occupational injuries:

(1) The simple form of employers' direct liability for compensation—the form of Great Britain and its Colonies.

(2) Compulsory mutual insurance of compensation—the German and Austrian form.

(3) Compulsory state insurance of compensation—the monopolistic or Norwegian form.

(4) Compulsory insurance of compensation in various optional ways—the form of Italy, The Netherlands, etc.

Even if we believe—what is constantly appearing more doubtful—that the German system of compulsory mutual insurance is the best, yet we cannot adopt it, because it is fitted only to political, social and industrial conditions far different from ours. More particularly the trade associations, with power of regulation, etc., over the establishments of their members, are vital to the success of the German system. Without that feature the German system would result in the subsidization of careless employers at the expense of the careful—in short, in the promotion of accidents.

As between the Norwegian system of monopolistic state insurance on the one hand, and the Italian and Dutch systems of competitive state insurance on the other

hand, the tendency of opinion just now seems to be in favor of the Norwegian method. For if the state goes into the insurance business at all, it is simpler and cheaper for it to have a monopoly. Otherwise it will get the bad risks and the risks in those employments for which it may accidentally place its rates too low, and will then have to compete with private companies for the good business, and, of course, incur a higher cost of administration. The reason why the state cannot successfully compete with private companies is not far to seek; it is because it cannot conduct business as efficiently as can private enterprise. Its errors in rates are constant and flagrant. Its cost of administration is in some cases very low; but that is effected largely by omitting the expensive procedure requisite for right conduct and efficiency, so that the real cost to employers and to the public may eventually be very high. The state insurance office may secure the entire field to itself by operating at a loss; but if, to avoid that, it jacks up rates arbitrarily, private companies will underbid for the really good risks, and leave the state to carry the bad. We seldom hear well-informed advocates of state insurance boast of its success in Italy or the Netherlands. To thrive, state insurance must have a practical monopoly of the field in which it operates. Therefore, Norway is the model to follow, if we elect state insurance as our principal recourse.

The choice, therefore, narrows down until it lies between compulsory state insurance, as in Norway, and a simple compensation liability law, as in England—with provisions for compulsory security or insurance added, if deemed desirable.

There is one vital factor omitted in the calculations of the majority of the advocates of state insurance. Their object is merely to distribute the wage losses from industrial accidents. But that is not the sole object of a compensation law. Two of its principal objects are to do prompt average justice and to *prevent accidents.* These latter objects our advocates of state insurance generally ignore. It is the prevailing opinion of experts in industrial safety, that the imposition upon employers individually of the compensation liability for the accidents occuring in their respective establishments, is the most efficient single means of effecting a reduction in industrial accidents, and, therefore, that if the employer be required by law to insure the payment of that liability, the cost of his insurance should be very closely in proportion to what would be his direct liability were it not for the insurance. But if insurance enables an employer to shift the excess of his liabilities (over the average) upon his competitors, *the effect will be to encourage him to continue the use of dangerous processes, practices and equipment, obsolete machinery and cheap and unskilled labor, to increase the intensity of his labor and to relax his care and efforts for safety.*

It is perhaps possible that the state may be able, by statutory regulations, to compel all employers in each industry to maintain something approaching a common level of safety, so that a "flat" rate for each industry would correctly distribute the compensation cost. But such a level of safety could only be low; for state regulations are inevitably either merely elementary or too general, inelastic and *inexpert* to effect the high level of safety that could be reached if safety were to be made an economic advantage to the individual employer. Accidents are not so much in proportion to violations of state regulations as they are in proprotion to the risks inherent in the trade, to the care and conduct of the employer, to the character of his equipment (including personnel) and to the intensity of his "drive." It is simply folly to believe that the state by formal regulations can control these latter factors of danger as well as the employer can or as he would if given a direct pecuniary motive for so doing. Equally imaginary is the idea, embodied in the Washington law, that state officials can correctly differentiate as to exceptionally dan-

gerous establishments in particular industries, for the purpose of imposing an exceptionally high premium rate upon such establishments—for that supposes a common level of safety, with a few conspicuous exceptions, whereas in fact, the different establishments in each industry are more apt to run the gamut from the highest to the lowest level in the scale of safety conditions, so that if the rate of insurance is varied for one it should, in fairness, be varied for many or all.

The first objection to state insurance, therefore, is that it would result generally in an arbitrary flat rate in each trade, which, while it might distribute cost of compensating for accidents, would not distribute it *justly* nor so as to offer a pecuniary inducement to the individual employer to exert the utmost thought and care and to go to the extreme of his ability in expense in order to reduce the proportion of accidents in his own establishment. This objection to state insurance is illustrated by a comparison between the premium rates in England, under simple compensation, and the rates in Norway under state insurance. In England, the rate for each trade, being subject to competition, is elastic, and varies approximately in proportion to the estimated risk in each establishment. In Norway, the rate for each industry is "flat;" and experience shows that in the past the rates for the respective industries have generally been either about double, or about one-half the estimated cost of the compensation liability accrued; in other words, not only have the safer establishments paid part of the losses in the less safe establishments in the same trade, but many trades have paid part of the losses in other trades. Perhaps the rates may be adjusted until in time they will become approximately fair as between the different trades, although experience in Holland shows that even that is extremely improbable; but the vital objection will still remain that the careful employer will be made to pay the same rate as the careless employer—in short, that in regard to this whole subject employers will be reduced to the condition of mere wards of the state, so that each will have to take whatever rate the state may give him and will feel called upon to take only the precautions against accidents that the state may require. That is far from being the most effective way to prevent accidents. But it is a most effective first step on the way to *complete state control and operation of industries.*

There is only one working example of compulsory state insurance of compensation—the Norwegian system. Except as to justice and the prevention of accidents, which that system ignores—in other words, as a pure insurance proposition—the experience under the Norwegian system has so far been quite favorable, (i. e., so far as known, for Norwegian experience is to a large degree hidden from us by difficulties of language). To what extent that favorable experience has been due to the extremely favorable conditions in Norway, is a question. The experiment has been on a small scale, for the population of Norway is only about 2,200,000, of whom only a relatively small proportion are engaged in industries covered by insurance; the population is stable, which is an important factor in cheapness and correctness of administration, and the vital dangers of the scheme have not yet been fairly tested, because it had been only a few years in operation and so far has happened to be under the charge of unusually competent insurance experts, and singularly free from politics. But even under such conditions, the insurance rates in Norway are not apparently any lower than medium English rates. It may be that the maximum English rates really prevail, in which case insurance in Norway is substantially the cheaper for employers; but it must be borne in mind that Norwegian insurance covers only compensation for accidents, while the English rates cover also a liability for compensation for occupational diseases and an alternative liability for full damages in tort in certain exceptional cases. And against any advantage in the Nor-

wegian rates must be offset the fact that those rates have resulted in a deficiency in the reserves to cover accrued liabilities. It is true that the deficiency was small—only about $400,000—but on the same scale in New York or Pennsylvania a similar error would have resulted in a deficiency of some millions of dollars—no mere trifle to be made up by the public. And this misadventure under the careful Norwegian management indicates a grave danger of state insurance—namely, a tendency to make a good showing for cheap management, leaving it to the taxpayers generally to make good the loss from any probable error.

The Washington scheme is a novel experiment on a small scale, but it is subject to even more dangers than the Norwegian scheme. The Ohio scheme has no requirements for any form of reserves and it has the functions of assessing premium rates and of adjudicating claims confided without rule or limitation to the discretion of a political board of three members, subject to political influences in the direction of low rates and high awards. It, therefore, is subject to vastly greater danger of miscarriage than the Norwegian scheme. Experience and reason both excite the fear that such schemes will result in deficiencies and occasionally in heavy deficiencies. And deficiencies would undoubtedly be most serious evils; for the effect of a deficiency is to transfer the burden of paying compensation from the employers responsible for the injuries, to persons not in any way responsible.

It is a strong argument in favor of state compulsory insurance that the expense of operation in Norway has been calculated to be only 11 per cent, while the corresponding expense of the English companies, under a regime of private compensation, had been about 36 per cent of premiums—in other words, what is generally regarded as an economic waste appears to be three times as great in England as in Norway. But the correctness of the 11 per cent figures is open to serious doubt, and the force of this argument is further weakened by two considerations: (1) So far as expense of operation covers the cost of investigation, etc., requisite for the differentiation of rates in proportion to the actual risks in each trade and under different employers and in different establishments, it is not waste, *but is most desirable even at a high price.* Consequently, so far as state insurance saves expense by ignoring that differentiation where it is material, state insurance is "cheap" only in a derogatory sense—i. e., *it is bad.* (2) In Norway, under state insurance, all payments for compensation (except by several railroads, which are exempted from the law) are subject to this 11 per cent waste. But in England a material proportion of establishments, which pay their compensation obligations regularly, do not insure, or insure themselves and thus escape this waste altogether. And not only that, but under the latitude which the compensation law of England most wisely allows and encourages, but which a compulsory state insurance law would tend to discourage, some large establishments have evolved insurance and compensation schemes of their own—with and without reinsurance—more beneficial to employes and more effective for the prevention of accidents than any general scheme prescribed by any law. That is the ideal for large establishments—more desirable even than the German system at its possible best.*

The most generally avowed object of the American advocates of compulsory insurance is to "distribute" the shock of the cost to employers of compensating for industrial accidents. But distribute among whom? Among the public generally, among all taxpayers, among those in nowise responsible? That is certainly the object towards which their schemes are directed, whether or not that be their conscious purpose. But to so

*The principal explanation of the relatively low ratio of administration expense under the Norwegian law was overlooked in this address—which is that the Norwegian insurance is unconcerned with injuries lasting less than four weeks, while the English insurance covers all injuries lasting over one week.

distribute the compensation cost would in effect subsidize unnecessary extra-hazardous processes, methods and practices. That object, therefore, deserves the most emphatic condemnation. It is in effect an entirely different proposition from the economic doctrine that the accident cost in production should be distributed among consumers by adding that item in the cost of a product to its price—for that does not mean that the compensation cost in one product should be distributed among other products, but that it should be added to the price of *that particular product, if possible.* Equally objectionable is the purpose of state insurance, which many of the representatives of the working people have in view. They claim that industrial employes are as much the benefactors of the state as soldiers, and deserve to be pensioned by the state for injuries, like soldiers, regardless of expense and of the methods of meeting that expense. But soldiers serve the state while private workmen serve their employers; and for the same reason that the state pensions the disabled soldier, the private employer—not the state nor the public—should compensate the disabled workman.

State insurance, then, is not yet a formulated scheme with a definite object; but its advocates are divided into groups with diverse and inconsistent objects; and its social, industrial and economic effects will vary radically according to the objects towards which its methods, when formulated and defined, are directed. It may be used to throw a part of the accident cost of this generation over upon the succeeding generation, to subsidize the hazardous industries at the expense of the state or of the safer industries, to favor unionized trades at the expense of the non-unionized, or vice versa, etc., in short, it is a screen behind which the cost of compensating for injuries may be shifted in any way and in any proportion that the legislature or the board of officials to whom the legislature confides the administration may make up its mind to, from time to time. In Ohio, for example, no methods of insurance are prescribed by law. The Board of Awards may tax the employers affected almost as it chooses, may maintain the fund about as it chooses, and may make awards against the fund almost to whom it chooses and upon such evidence as it chooses—without right of appeal in anyone except the claimant. The scheme, therefore, is unformulated, indefinite and easily divertible towards any object that the Board of Awards, in the use or misuse of its discretion, may decide.

The problems involved in the adjudication or allowance of claims for compensation are serious enough to deserve separate consideration. Claims for compensation cannot be indiscriminately allowed; for the tendency to malinger and the opportunities for fraudulent impositions in claims for dependency upon a compensation law are so great as to imperil the success of the whole scheme, unless effectively checked. The German practice of shifting the burden of compensation for the first thirteen weeks of disability onto the sickness insurance fund (to which the working people contribute about two-thirds) tends to check malingering; and the German employers' associations, which, in first instance, pass upon all claims, are diligent to prevent impositions; ***nevertheless fraudulent impositions have been so great under the German scheme, as, in the opinion of many close observers, to condemn the whole scheme.*** And in every state insurance country of which I have any information on this point—unfortunately, I have none as to Norway—the complaints about malingering and impositions are yet more insistent. And the difficulties of avoiding these abuses would be far greater here than in Europe. For in the Northern countries of Continental Europe all points of information about a workman requisite to avoid impositions in the application of the compensation law in case of an injury to him are generally of record and easily accessible—his age, the fact of his marriage, the names and ages of his wife, children, parents, etc.,

are all facts easily ascertainable and proved. In America, on the other hand, with our lack of vital statistics and unstable and immigrant working population, such necessary facts are infinitely more difficult and expensive to ascertain and often impossible to prove. The opportunities for fraudulent claims for dependency, etc., are, consequently, far greater here than in Europe. *And in order to prevent malingering and exaggerations of disability upon a wholesale scale it will be essential to provide adequate and efficient machinery for a careful and critical investigation of all claims for disability.*

Under compulsory state insurance, the state assumes the liability, the employer is out of it and the whole task of investigating claims will fall upon the state. In New York, for example, there would pour into the state insurance office about 4,000 notices of accidents a month. How would the state deal with them? It should in each case ascertain whether the injury was one entitling the injured person to compensation, i. e., whether it arose out of and in course of the employment, and not from an excepted cause, etc. It should then ascertain the earnings of the injured workman, the nature of his injury and the degree and duration of his disablement—or, in case of fatal injury, the names, ages, residences, relationship, etc., of his dependents. Then, where pensions are allowed, it should continuously observe the pensioners so as to stop or reduce payments upon proper contingencies. And it is a *sine qua non* of the success of a compensation law that all these things should be done justly, according to the law, without partiality, with the lowest practicable margin of error and at minimum expense—for the expenses will be very material. The means provided for performing these functions in Ohio and in Washington seem to me ridiculously inadequate. The idea relied upon that a few officials in a central office—with the aid of a few investigators in the field to look into special cases or of district physicians serving part time for fees—can effectually sift out frauds and exaggerations in such a mass of claims, shows that the magnitude of the problem has been wholly unappreciated.

My conclusion, then, is that in experimenting with state-managed insurance we are playing with fire; that the course of such insurance is uncharted and runs perilously close between the Scylla of Socialism and the Charybdis of organized graft.

P. TECUMSEH SHERMAN.

New York.

CORPORATION—SLANDER BY AGENT.

FENSKY v. MARYLAND CASUALTY CO.

Supreme Court of Missouri, Division No. 1. March 2, 1915.

147 S. W. 416.

A corporation is liable for a slander uttered by its agent while acting in the scope of his employment, and in the actual performance of the duties thereof touching the matter in question, though the corporation had no knowledge and did not ratify the act of the agent.

GRAVES, J. This is an action for slander. In the trial court the plaintiff was cast upon a general demurrer, charging that his petition failed to state facts sufficient to constitute a cause of action. That is the sole question here. The petition reads:

"Plaintiff states that he is and was at all times herein mentioned a regularly licensed attorney at law, and has been practicing his profession in the city of St. Louis, Mo., for the past 15 years; that the defendant, Maryland Casualty Company, is a foreign corporation doing business in the state of Missouri, and is engaged, among other things, in carrying employers' liability insurance.

"Plaintiff further states that on the 8th day of May, 1911, he was employed by one Eugene May, colored, to prosecute his claim for damages against the Polar Wave Ice & Fuel Company, a corporation, doing business in the city of St. Louis, on account of personal injuries sustained by the said Eugene May while in the employ of said Polar Wave Ice & Fuel Company on or about the 29th day of April, 1911, at its plant at or near Cook and Channing ave-

nues, in said city of St. Louis; that plaintiff's contract of employment was in writing, duly signed by the said Eugene May; and that by reason thereof plaintiff had a property right in said cause of action to the extent of his statutory lien, which said contract is herewith filed and marked Exhibit A.

"Plaintiff further states that the said defendant, Maryland Casualty Company, was assurer for said Polar Wave Ice & Fuel Company, and had contracted and agreed to hold the said Polar Wave Ice & Fuel Company harmless from any and all liability by reason of damage suits, and was, by reason of said contract of assurance, vitally interested in the outcome of the claim of said Eugene May.

"Plaintiff further states that he duly notified the Polar Wave Ice & Fuel Company of his employment in writing by said Eugene May and of his statutory lien on the cause of action, and that the said Polar Wave Ice & Fuel Company in turn notified the said Maryland Casualty Company.

"Plaintiff further states that on or about the 19th day of May, 1911, two agents of the defendant corporation, whose names, to the best knowledge and belief of plaintiff, are Fred Kraemer and —— Hulbert, having in their company the said Eugene May, called on plaintiff at his office in the Times Building, in the city of St. Louis, Mo., and said Fred Kraemer, agent of defendant, while acting within the scope of his employment and in the actual performance of the duties thereof touching the matter in question in the presence and hearing of this plaintiff and of divers other persons, falsely, wantonly, and maliciously spoke of and concerning the plaintiff the following false, malicious and defamatory words, to-wit: 'The contract you (meaning plaintiff) claim to have with this man (meaning May) was not signed by him, and he (meaning May) is here to tell you so. Furthermore the day on which this contract is alleged to have been signed, I saw May, and his hand was so badly hurt and bandaged that he could not have signed his name if he wanted to'— then and there intending to charge and impute, and then and there charging and imputing, to plaintiff, that he had in his possession and was asserting a right under a forged instrument, knowing the same to be forged, which said charge, if true, constitutes a felony under the laws of the state of Missouri, and would subject plaintiff to degrading punishment.

"Plaintiff further states that at the time of uttering said false, malicious, and defamatory words as aforesaid, and with a view of intensifying said slander, the said Fred Kraemer, agent of said defendant, while acting within the scope of his employment and in the actual performance of the duties assigned to him by this defendant, procured the said Eugene May, under promise of pecuniary reward, to then and there deny his signature in the presence and hearing of plaintiff and divers other persons; that the false and slanderous language so spoken of and concerning the plaintiff, together with the denial of said Eugene May, so procured as aforesaid, was understood and believed by the persons, in whose presence and hearing the same was uttered, to mean that plaintiff had in his possession and was asserting a right under a forged contract, and that he (the plaintiff) then and there knew the same to be forged.

"Plaintiff further says that the false and slanderous words so spoken of and concerning the plaintiff by defendant's said agent, while acting in the scope of his employment, greatly humiliated plaintiff and has greatly prejudiced him in his good name, fame, and reputation, and has greatly injured him in his profession and business as an attorney at law, to his damage in the sum of $50,000, in actual damages in the sum of $25,000, and in exemplary or punitive damages in the sum of $25,000.

"Wherefore, the premises considered, plaintiff prays judgment against defendant for $25,000 actual damages and for $25,000 punitive damages, and for his costs in this behalf sustained."

(1) I. The demurrer being a general one, we are not advised upon what theory the trial court held this petition bad. In the brief of appellant it is said that the trial court took the view that there was no agency in slander, and a corporation was not liable for the slanderous statements of its agent. We admit that a rule thus broad is announced by Townshend on Slander and Libel (4th Ed.) § 265, whereat it is said:

"As a corporation can act only by or through its officers or agents (section 261), and there can be no agency to slander (section 57), it follows that a corporation cannot be guilty of slander. It has not the capacity for committing that wrong. If an officer or an agent of a corporation is guilty of slander, he is personally liable, and no liability results to the corporation."

This rule has long since been exploded, and rightfully so. The more recent and better rule is well worded in 5 Thompson on Corporations (2d Ed.) § 5441, whereat it is said:

"The general rule makes the corporation liable for a slander uttered by its agent while acting within the scope of his employment and in the actual performance of the duties thereof touching the matter in question, though the

slander was not uttered with the knowledge of the corporation or with its approval, and though it did not ratify the act of the agent."

To like effect is 1 Clark and Marshall on Private Corporations, p. 627:

"It has been said that a corporation cannot be liable for a slander or oral defamation by its officers or agents, as 'there can be no agency to slander;' and the opinion has also been expressed that a corporation, because of its impersonal nature, cannot commit torts involving the element of malice, since, to support an action for such a tort, 'it must be shown that the defendant was actuated by a motive in his mind, and a corporation has no mind.' This reasoning, however, is unsound. A corporation, it is true, has no mind, and cannot itself entertain malice, but its officers and agents may, and their mental attitude, including their malice, may, like their consent to a contract or their physical acts, be imputed to the corporation. It is well settled, therefore, for this reason, that a corporation may, to the same extent as a natural principle, be liable for the malicious wrongs of its officers or agents, if committed in the course of a transaction which is within the scope of their authority."

And on page 628 the same authority says:

"Thus it has been held that a corporation may, to the same extent as an individual, be liable in an action for libel, or, it seems, for slander or in an action for malicious criminal prosecution or malicious false arrest or imprisonment for malicious prosecution of a civil action, attachment, or other proceeding, for malicious interference with the business of another, for making a false return to a writ, as a writ of mandamus, for example, and for conspiracy, all of which offenses involve a mental element."

Further in a note on page 629, the same authority adds:

"While it is true that a corporation cannot itself speak, and therefore cannot itself slander, neither can a corporation itself make a false representation, and yet a corporation may be liable for the false representations of its agents. For the same reason, it may be liable for a slander by its agents."

In the recent case of Hypes v. Southern Ry. Co., 82 S. C. loc. cit. 317, 64 S. E. 396, 21 L. R. A. (N. S.) 873, 17 Ann. Cas. 620, Mr. Justice Jones says:

"It is established that corporations, as well as natural persons, are liable for the willful tort of an agent acting within the general scope of his employment, without previous express authority or subsequent ratification. Rucker v. Smoke, 37 S. C. 377, 16 S. E. 40 [34 Am. St. Rep. 758]; Williams v. Tolbert, 76 S. C. 217, 56 S. E. 908; Schumpert v. Railway, 65 S. C. 332, 43 S. E. 813 [95 Am. St. Rep. 802]; Gardner v. Railway, 65 S. C. 342, 43 S. E. 816; Riser v. Railway, 67 S. C. 419, 46 S. E. 47; Dagnall v Railway, 69 S. C. 115, 48 S. E. 97; Fields v. Cotton Mills, 77 S. C. 549, 58 S. E. 608, 11 L. R. A. (N. S.) 822 [122 Am. St. Rep. 593]. The old doctrine that a corporation, having no mind, cannot be liable for acts of agents involving malice, has been completely exploded in modern jurisprudence. While a corporation is nonpersonal in its formal legal entity, it represents natural persons, and must necessarily perform its duties through natural persons as agents, hence must spring the correlative responsibility for the acts of its agents, within the scope of their employment. The liability of a corporation for malicious libel published by its agent in the course of his employment is generally recognized. Philadelphia, etc., Ry. Co. v. Quigley [21 How. 202] 16 L. Ed. 73; Johnson v. St. Louis Dispatch Co. [65 Mo. 539] 27 Am. Rep. 293; Bacon v. Michigan, etc., R. R. Co. [55 Mich. 224, 21 N. W. 324] 54 Am. Rep. 372; Mayard v. Firemen's Fund Ins. Co. [34 Cal. 48] 91 Am. Dec. 672; Fogg v. Boston, etc., R. R. Co. [148 Mass. 513, 20 N. E. 109] 12 Am. St. Rep. 583; Missouri Pacific Ry. v. Richmond [73 Tex. 568, 11 S. W. 555, 4 L. R. A. 280] 15 Am. St. Rep. 794; 10 Cyc. 1215; 18 Ency. Law, 1058. We do not regard the distinction between written and unwritten slander to be of sufficient importance to warrant the application of a different rule. The written slander is not always or necessarily more public than the spoken; and if it may indicate more deliberation, and hence warrant more easily the inference of malice, the difference is merely in degree, not in kind."

So, too, in the case of Rivers v. Railway Co., 90 Miss. loc. cit. 211, 43 South, 472, 9 L. R. A. (N. S.) 93 Whitefield, C. J., says:

"The doctrine has long been exploded that a corporation is not liable for slander because, as it was ridiculously expressed, there could be 'no agency to slander.' The true doctrine is that set forth in Clark & Marshall on Corporations, vol. 1, pp. 627-629."

The learned jurist then quotes from the text as we have quoted supra. In our own state this modern rule as to slander is fully recognized. Payton v. Clothing Co., 136 Mo. App. 577, 118 S. W. 531.

There can be no sound reason for saying that a corporation may be liable for libel (a

doctrine long recognized) and yet not liable for slander—unwritten libel or defamation of character. Under the modern rule, the corporate shell will not shield the corporation from the ill effects of the slanderous tongue of its agent, if, at the time, the agent was transacting for the corporation the business of the corporation, and the slander was uttered in the course of such business, and in connection therewith. As an individual I cannot go to another individual to adjust an account with him, and in the course of so doing publicly denounce him as a thief. Nor should a corporation, through its agents, be able to thus denounce a citizen, and escape liability. This phase of the case (i. e., the character of the agent) we discuss later. It is sufficient to say at this juncture that the corporation is not relieved from liability upon the theory that there "is no agency to slander." If this was the theory nisi, and there were no other questions in the case, the judgment cannot be sustained. * * *

The doctrine of "no agency to slander" and "the corporation can't slander because it can't talk" having been fully exploded, it is liable in slander just the same as for any other tort. It is not liable for any tort which is not committed in the course of the agent's employment.

We think a liberal construction of this petition (which construction we are entitled to give it upon a mere formal demurrer) shows that a cause of action was stated, and the trial court erred in sustaining the demurrer thereto.

The judgment nisi is reversed, and the cause remanded. All concur.

NOTE.—*Liability of a Corporation for Slander by an Agent in Furtherance of Its Business.*—The instant case does not distinguish, if there may be a distinction, between libel and slander committed by an agent in furtherance of a corporation's business. All of its argument may be admitted so far as libel is concerned and the question remain open, so far as slander is concerned. Thus, a Kentucky court, after citing a number of cases holding corporations liable for libel, says: "A partnership or corporation cannot be held liable for the slanderous utterances of its agents or servants unless the actionable words were spoken by its express consent, direction or authority, or are ratified or approved by it." Duquesne Distilling Co. v. Greenbaum, 135 Ky. 182, 121 S. W. 1026, 21 Anno. Cas. 481.

It is to be noted that all of this is not required in a libel case, but this action stands like the commission of any other tort, in jurisdictions where a corporation is held for malicious injury.

The court then goes on to say that: "A different (than the ordinary) rule in tort should be applied when it is attempted to hold the master or principal in slander for defamatory words spoken by his agent or servant. Slanderous words are easily spoken, are usually uttered under the influence of passion or excitement, and more frequently than otherwise are the voluntary thought and act of the speaker. Or, to put it another way, the words spoken are not generally prompted by or put into the mouth of the speaker by any other person, and represent nothing more than his personal views or opinions about the person or thing spoken of. If principals or masters could be held liable for every defamatory utterance of their servants or agents while in their service, it would subject them to liability that they could not protect or guard against. No person can reasonably prevent another, not immediately in his presence, from giving expression to his voluntary opinions, however defamatory they may be." The court proceeds at considerable length in development of this idea, concluding with the statement that: "To lay down a rule like this would be ruinous to persons who are obliged in the conduct of their business to employ agents or servants." Otherwise is the rule "where the principal directs or authorizes the agent to speak certain words, or if with knowledge of their speaking he approves or ratifies them."

This case was confirmed in Stewart D. G. Co. v. Heuchter, 148 Ky. 228, 146 S. W. 423, and a number of cases cited in support of the ruling.

In Singer Mfg. Co. v. Taylor, 150 Ala. 514, 43 So. 210, 9 L. R. A. (N. S.) 929, 124 Am. St. Rep. 90, it was said: "By reason of the fact that the offense of slander is the voluntary and tortious act of the speaker, and is more likely to be the expression of momentary passion or excitement of the agent, it is, we think, rightly held that the utterance of slanderous words must be ascribed 'to the personal malice of the agent, rather than to an act performed in the course of his employment and in aid of the interest of his employer, and exonerating the company unless it authorized or approved or ratified the act of the agent in uttering the particular slander.'"

In McIntire v. Cudahy Pkg. Co., Ala., 60 So. 848, the Taylor case is approved and there is a quotation from Odgers on Libel and Slander, also approved as follows: "A corporation will not, it is submitted be liable for any slander uttered by an officer, even though he be acting honestly for the benefit of the company, unless it be proved that the corporation expressly ordered and directed that the officer say those very words; for a slander is the voluntary tortious act of the speaker."

And it seems the rule in North Carolina that it must be alleged and proved that there was authority to utter a slander or that it was ratified. Redditt v. Singer Mfg. Co., 124 N. C. 100, 32 S. E. 392. See also Behre v. Nat. C. R. Co., 100 Ga. 213, 27 S. E. 986, 62 Am. St. Rep. 320.

In Kane v. Ins. Co., 200 Mass. 265, 86 N. E. 302, a case failed because there was no proof of actual authority given to the slanderous statements, or that they were made with the corporation's knowledge nor was there any proof tending to show ratification of their utterance.

Waters Pierce Oil Co. v. Bridwell, 103 Ark. 345, 147 S. W. 64, 32 Anno. Cas. 837 is a well considered case supporting the view of the in-

stant case and it cites many authorities, but neither it nor they allude to the distinction drawn by the Greenbaum case, *supra*, and others following on the same line that the act complained of is the mere individual tortious expression of opinion.

We think, that this distinction is sound, as it certainly is presumptively no qualification for an agent to possess the mere ability to abuse another and if he gives way to anger this is a frailty owing to temperament, of the existence of which in an agent one might be entirely ignorant. Besides all of these cases admit that if slanderous words are expressly ordered to be spoken or are subsequently ratified the corporation is liable. It well might be that if a corporation were shown to practice intimidation in its methods little, if anything, more would be needed for a jury to conclude rightfully, that slander by its agents was contemplated when they were sent out. C.

ITEMS OF PROFESSIONAL INTEREST.

THE STORY OF THE OHIO BAR ASSOCIATION.

This story is the first of a series of short sketches giving the history and achievements of the various state bar associations.

The Ohio Bar Association was organized July 8, 1880, its first president being Judge Rufus P. Ramney, one of the most distinguished jurists that ever sat on the bench in Ohio. The growth of the Association at first was slow but in later years has been quite rapid, and the interest taken in the Association meetings has been greater, which is probably true of all Bar Association meetings.

During the thirty-five years of its existence the Ohio Bar Association has actively supported many reforms, having for their purpose the improvement of the law or its administration. Thus, at different times they have advocated and secured the adoption of the following, to-wit: (1) A new appellate court instead of the former reviewing court, composed of, in part at least, the same judges who had tried cases below; (2) the subject of Legal Ethics was made prominent and its enforcement urged throughout the state and the study of it made a part of the curriculum necessary for admission to the bar; (3) time for prosecuting error was shortened, and thus the law's delay in this respect lessened to a degree; in addition to that many other propositions for simplifying procedure have been adopted and their ratification secured by the people or by the legislature; (4) the Association has supported the Commission on Uniform State Laws in securing the adoption of the Uniform Negotiable Instruments Law and the Uniform Sales Act; (5) salaries of judges of the appellate and of the supreme courts, which were ridiciulously low, were increased on the request of the Association.

At the last meeting of the Association at Cedar Point, July 7 and 8, the Association voted to conform their plans for reforming procedure to those of the American Bar Association, and passed a resolution asking the legislature to empower the chief justice to name a commission of judges having authority to make rules regulating matters of pleading, practice and procedure and various courts of the state.

The aforesaid items stand out prominently among the achievements of the Ohio Bar Association but do not, of course, fully catalogue all the reforms undertaken by this Association.

For more than twenty-five years the Association has been meeting in July on Lake Erie; for about twenty years at Put-in-Bay, and for the last six or seven years at Cedar Point, where the next session will be held July 6, 7 and 8, 1915. The president for this year is Judge John N. Van Deman, of Dayton.

Judge Van Deman is a lawyer of the old school who finds time to take an active part in achieving the ideals of his profession, at the same time giving close attention to the prosecution of his private practice. Judge Van Deman began the practice of law in Washington, Ohio, in 1877. In 1894, he filled a short vacancy on the common pleas bench. In 1898, he removed to Dayton, where he has since continued in the practice of law, his present connection being with the firm of Van Deman & Vorys.

Judge Van Deman has been a member of the Ohio Bar Association and a regular attendant at its meetings for thirty years, having been at all times one of its most active and useful members; and for thirteen years has been a member of the American Bar Association. He is usually found in attendance at all the meetings of both these Associations, and a perusal of the Ohio State Bar Association reports will disclose the fact that he has taken a prominent part in all of its discussions.

The last meeting of the Ohio Bar Association was memorable by reason of the very interesting and thorough discussion of various propositions submitted by the Committee on Judicial Administration and Legal Reform.

The Association gave much time to the consideration of the non-partisan judiciary law, finally reaching the conclusion that while there was much yet to be desired in the selection of the judiciary, that the non-partisan was better than the political convention plan. Most of the members, however, from the printed report of their discussions, appeared to be in favor of the appointive system, although they were quite ready to admit that that plan is quite impossible of adoption at this time.

One of the interesting facts disclosed at the last meeting by Chief Justice H. L. Nichols, of the Supreme Court of Ohio, was to the effect that that court was up with its docket, which created loud applause, and was indeed worthy of receiving such applause. The statement of Judge Nichols was to this effect: "We have reached that status when every submitted case has been disposed of, and by, say, the first of next July the Supreme Court of Ohio will be up with its docket on orally argued cases."

The following are the officers of the Association for the present year:

President, John N. Van Deman, Dayton; Secretary, Chas. M. Buss, Cleveland; Treasurer, Clement R. Gilmore, Dayton. Chairmen of the following Committees: Executive, Edmund B. King, Sandusky; Judicial Administration and Legal Reform, Allen Andrews, Hamilton; Admission, Louis B. Sawyer, Cincinnati; Legal Education, U. L. Marvin; Grievances, Herbert W. Mitchell, St. Clairsville; Legal Biography, Wm. J. Geer, Galion; Legislation, Edward C. Turner, Columbus.

The Association has 1,148 members, about one-fifth of the bar of the state. A. H. R.

BAR ASSOCIATION MEETINGS FOR 1915—WHEN AND WHERE TO BE HELD.

Arkansas—Fort Smith, June 1 and 2.
Florida—Atlantic Beach, July 23 and 24.
Georgia—St. Simon's Island, June 3, 4, and 5.
Illinois—Quincy, June 11 and 12.
Kentucky—Frankfort, July 8 and 9.
Maryland—Cape May, N. J., July 7, 8 and 9.
Minnesota—St. Cloud, August 5, 6 and 7.
Mississippi—Vicksburg, May 4.
Montana—Billings, August 13, 14 and 15.
New Jersey—Atlantic City, June 11 and 12.
Ohio—Cedar Point, July 6, 7 and 8.
Pennsylvania—Cape May, N. J., June 29, 30 and July 1.
Tennessee—Chattanooga, June 24 and 25.

HUMOR OF THE LAW.

Young Long Brief hung a shingle out
To show his LL. B.,
And from A. M. to late P. M.
His office was M. T.
—Law Student's Helper.

Judge—Did you, last night, really call this man imbecile and idiot?

The Accused (gathering his wits)—I have some doubt of it; but the more I look at him, the more I think it possible—Law Student's Helper.

In a Western state the district attorney was arguing for conviction in a cattle stealing case. After he was through a brother attorney asked him how many hides a steer had, as he had told the jury that there was found in defendant's possession "one of the hides of a steer." He replied: "I did not say any such thing. I said one of the hides of one of the steers."

Representative Joseph Taggart, of Kansas, is a man brimming with epigrams and bits of philosophy—if he chooses to spring them. Being modest, he doesn't show his goods to everybody; but occasionally he pulls a sample within sight of all. The other day somebody was talking about a certain congressman who has a way of getting all "het up" and making a "great-to-do" over accomplishing small things.

"Yes," said Taggart, "that fellow invariably hitches a Corliss engine up to a gimlet."—St. Louis Globe-Democrat.

At one time Sergeant Manning, a very nervous man, was arguing a case before the judges of the Common Pleas in England. He had a large number of books before him, almost enough to constitute a library. While he was reading the report of one of the cases, a number of books tumbled off the table in front of him.

"My lords," said the sergeant, nervously, "it it reported in two other books in these exact words."

"Are you sure," asked Justice Maule, "that it is exactly the same?"

"Certainly, my lords," replied Manning, earnestly.

"Well, then," said Justice Maule, gravely, "why hunt for the other books? Read the same case again out of the one you have in your hand."

Manning saw the point, and when the merriment had subsided, he proceeded with his argument without further search for the much quoted case.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abatement and Revival**—Survivorship.—A bill to enjoin certain stockholders of a corporation from removing its books and papers from the courts' jurisdiction did not survive the death of one of the defendants against his executors.—Conley v. Huntoon, R. I., 92 Atl. 865.

2. **Adverse Possession**—Claim of Right.—Where a railroad company under a claim of right had continuous, exclusive, adverse, open, and notorious possession of a strip of land used as a right of way for 50 years, it acquired title by adverse possession.—Town of New Point v. Cleveland, C., C. & St. L. Ry. Co., Ind., 107 N. E. 560.

3.——Defined.—Under a deed to sons reserving to the grantor an estate during his life and the lives of his daughters, possession of a son held not adverse to the daughters, where they also lived on the land during their lives.—Brown v. Brown, N. C., 84 S. E. 25.

4.——Payment of Taxes.—Where is was admitted that the son of plaintiff's intestate, under whom defendant's intestate claimed, had paid taxes on the land in dispute, at a certain valuation, "as shown in the digests," state and county tax receipts to such person were admissible on the issue of adverse possession.—Causey v. White, Ga., 84 S. E. 58.

5. **Assignments for Benefit of Creditors**—Personal Liability.—Assignee for the benefit of creditors continuing to use teams purchased by debtor from plaintiff under a conditional sale held personally liable under the agreement for such use.—Jonas Edwards & Son v. Pinkham, Me., 92 Atl. 817.

6. **Attorney and Client** — Compensation.—Where attorneys contracted to render services for a fixed sum, they were not precluded from recovering on a subsequent contract for additional compensation for non-contemplated services rendered in the same matter.—Bishop v. Vaughan, Mo., 172 S. W. 644.

7. **Bailment**—Burden of Proof.—The bailor has the burden of proving that the bailee's negligence caused the destruction of the article bailed, although proof of destruction alone raises a presumption of negligence requiring the bailee to go forward with evidence.—Hanes v. Shapiro & Smith, N. C., 84 S. E. 33.

8. **Bankruptcy**—Discharge.—Where discharge in bankruptcy was not pleaded as a defense to an action on debt, judgment thereon was not subject to collateral attack, but was enforceable by arrest or levy.—Herschman v. Bolster, Mass., 107 N. E. 543.

9.——Homestead.—A bankrupt is not precluded from claiming a homestead as exempt because prior to adjudication he had failed to designate the same under the state laws, if he perfects his claim thereunder within a reasonable time after claiming the homestead.—Brandt v. Mayhew, U. S. C. C. A., 218 Fed. 422.

10.——Rescission.—Seller of goods to insolvent, in order to rescind and recover the goods, must show insolvency, concealment, and intent not to pay for the goods, at the time of purchase.—In re K. Marks & Co., U. S. C. C. A., 218 Fed. 453.

11.——Waiver.—An alleged bankrupt, by pleading to the merits in its answer and otherwise submitting to the jurisdiction, held to have waived its objection that the proceeding was not brought in the division of its domicile.—Clark-Herrin-Campbell Co. v. H. B. Claflin Co., U. S. C. C. A., 218 Fed. 429.

12. **Bills and Notes**—Blank Spaces.—Under Rev. St. 1909, § 9985, one who signs a note in blank gives the payee prima facie authority to complete it, but the payee cannot hold the maker unless the note is completed according to instructions.—Exchange Bank v. Robinson, Mo., 172 S. W. 628.

13.——Consideration.—Under Gen. St. 1906, §§ 2962, 2985, 2988, an executory contract constituting the sole consideration for a note, and a breach of such contract, may be shown in defense in an action on the note by a holder who took with knowledge of the contract.—Sumter County State Bank v. Hays, Fla., 67 So. 109.

14. **Boundaries**—Monuments.—Monuments or plain lines of location must generally prevail over acts of user or attempted jurisdiction by municipal authorities in determining territorial boundaries.—Commonwealth v. Stahr, Ky., 172 S. W. 677.

15. **Brokers**—Commissions.—Where a landowner sells to a purchaser found and introduced by the broker, he cannot escape payment of commissions on the ground that he sold at a less price than communicated to the broker.—Burdett v. Paris, Mo., 172 S. W. 620.

16.——Compensation. — Where, through the owner's fault, the sale is not completed, the broker's commission is the value of his services, and not the difference between the stipulated

price and the price named in the contract with the purchaser.—Sperry Realty Co. v. Merriam Realty Co., Minn., 150 N. W. 785.

17.——Procuring Cause of Sale.—A broker who agreed that the owner might sell the property during the time it was listed with him cannot recover compensation for a sale made directly by the owner, of which he was not the procuring cause.—Tebo v. Weld, Del., 92 Atl. 876.

18. **Carriers of Live Stock**—Estoppel.—Where a shipper of live stock without knowledge of its contents, hurriedly signed a contract for interstate shipment at the request of the carrier's agent, just as the train was starting, he was not bound thereby.—Gulf, C. & S. F. Ry. Co. v. Vasbinder, Tex., 172 S. W. 763.

19. **Carriers of Passengers**—Discrimination.—Discrimination between purchasers of mileage books and of trip tickets held not to render Laws 1913, c. 92, invalid, if the discrimination is produced by an unreasonable overcharge for trip tickets.—State v. Maine Cent. R. R. Co., N. H., 92 Atl. 837.

20.——Freight Trains—A carrier, receiving passengers on freight trains, must afford them reasonable opportunity to board and alight, and must guard against dangers which reasonable prudence could avoid.—Doran v. Chicago, St. P., M. & O. Ry. Co., Minn., 150 N. W. 800.

21. **Charities**—Cy Pres.—In the absence of any scheme judicially approved, the trustees of a charity cannot make a cy pres application of the estate on their own authority, even though it be desirable.—Lakatong Lodge, No. 114, of Quakertown v. Board of Education of Franklin Tp., Hunterdon County, N. J., 92 Atl. 870.

22. **Constitutional Law**—"Blue Sky Law."—A court of equity will not inquire into the constitutionality of a state "blue sky law" at suit of a corporation whose plan of doing business indicates on its face that it is intended to defraud.—National Mercantile Co. v. Keating, U. S. D. C., 218 Fed. 477.

23.——Civil Service Law.—Civil service law, authorizing civil service commission to provide rules as to civil service, are not a delegation of powers to enact laws in violation of Const. art. 1, § 18.—Green v. State Civil Service Commission, Ohio, 107 N. E. 531.

24.——Police Power.—One constructing an apartment house under a permit from the city and in accordance with the then existing ordinance does not acquire a vested right of exemption from a subsequent reasonable exercise by the city of the police power to enact an ordinance requiring the installation in such houses of fire appliances.—Williams v. City of Chicago, Ill., 107 N. E. 599.

25.——Reasonable Rates.—The legislature cannot prevent the courts from passing upon the reasonableness of railroad rates, and a proviso in an act prescribing a rate attempting to do so is void.—State v. Maine Cent. R. R., N. H., 92 Atl. 837.

26.——Religious Liberty.—A city ordinance prohibiting the playing of baseball on Sunday does not violate the Declaration of Rights, art. 36, guaranteeing religious liberty.—Hiller v. State, Md., 92 Atl. 842.

27. **Contracts**—Consideration.—Where defendant gave notes secured by a mortgage for the price of a threshing outfit, his agreement with the seller not to defend a suit on the notes if he was relieved of personal liability is supported by a sufficient consideration.—Gaar, Scott & Co. v. Vanhook, Ky., 172 S. W. 680.

28. **Corporations**—Individual Debt.—President, principal stockholder and controlling spirit of corporation, held not authorized to use its bank deposit in payment of an individual debt to the bank, and his direction to the bank did not authorize it to so use it.—Buena Vista Veneer Co. v. Hodges, Ark., 172 S. W. 868.

29.——Notice.—Plaintiff's cashier held not chargeable, in the absence of actual knowledge or negligence, with notice of a requirement of the by-laws of the defendant corporation that no note should be valid unless signed jointly by its president and treasurer.—Grant County State Bank v. Northwestern Land Co., N. D., 150 N. W. 736.

30. **Courts**—Jurisdiction.—The appointment or a reciver for a corporation by a state court, with authority to bring suit on a cause of action existing in favor of the corporation, if the court obtained jurisdiction, excludes the right of a receiver, subsequently appointed by a court of another state, to maintain a suit on the same cause of action.—Lively v. Picton, U. S. C. C. A., 218 Fed. 401.

31. **Criminal Evidence**—Blood Hounds.—After testimony as to the qualification of bloodhounds for trailing criminals, evidence of their performance in taking the trail at a place where hogs escaped from a ranch, and following it to defendant's house, held admissible.—Holub v. State, Ark., 172 S. W. 878.

32. **Criminal Law**—Appeal and Error.—The question on an appeal from a conviction of murder, where no exceptions were reserved, is whether the jury could believe beyond a reasonable doubt that accused committed the homicide with malice aforethought, express or implied.—State v. Mulkerrin, Me., 92 Atl. 785.

33. **Death**—Damages.—The amount recoverable in an action under the federal Employers' Liability Act for the death of a brakeman, being controlled solely by such act and not by the state law limiting to $10,000 the amount recoverable for death, is limited only to the damages actually sustained.—Devine v. Chicago, N. I. & P. Ry. Co., Ill., 107 N. E. 595.

34.———Mortality Tables.—Tables of the probable length of life and its probable worth, though admissible, are not conclusive or essential on the question of expectancy of life.—Standard Oil Co. v. Reagan, Ga., 84 S. E. 69.

35. **Deeds**—Insane Grantor.—A grantor, though not positively insane, may be so incapacitated as to be unable to guard himself against imposition or to restrain importunity, and therefore be incompetent to execute a deed.—Jones v. Travers, Ark., 172 S. W. 828.

36. **Disorderly Conduct**—Ordinance.—It is not essential to the violation of an ordinance prohibitng the making of any unnecessary noise, hibiting the making of any unnecessary noise, derly, that the noise shall disturb more than one person.—Garvin v. City of Waynesboro, Ga., 84 S. E. 90.

37. **Divorce**—Defense.—A defendant should on request be permitted to defend in a divorce case at any time before the final decree is signed, except where clearly wanting in good faith.—Grant v. Grant, N. J., 92 Atl. 791.

38.——Reserving Decree.—Judgment of divorce will be reserved and annulled, where after perfection and submission of appeal the appellate court is shown that the parties have settled their troubles and become reunited, and that plaintiff is not disposed to further prosecute the suit.—Crawford v. Crawford, Tex., 172 S. W. 724.

39. **Ejectment**—Tracing Title.—Where plaintiff traces his title to a certain company and shows that the land had been approved by the United States to another company with which he fails to connect his title, he cannot recover.—Ocala Northern R. Co. v. Malloy, Fla., 67 So. 93.

40. **Elections**—Illiteracy of Voter.—A voter is not illiterate if he can read in a reasonably intelligible manner sentences composed of words in common use, of average difficulty, and can write if by alphabetical signs he can express words in a fairly legible way.—Justice v. Meade, Ky., 172 S. W. 678.

41. **Embezzlement**—Continuing Offense.—Several indictments, in terms permitted by Gen. Laws 1909, c. 345, § 18, construed with the bill of particulars, and held not to charge a continuing offense subject to one prosecution only and to one penalty up to the time of the indictment.—State v. Davis, R. I., 92 Atl. 821.

42. **Estoppel**—Husband and Wife.—A wife permitting her husband to use her property under such circumstances as to justify his creditors in believing that it is his is estopped to assert title against the creditors.—Miller Watt & Co. v. Mercer, Iowa, 150 N. W. 694.

43.——Pleadings.—A plea in ejectment held insufficient as a plea of estoppel, where it failed to allege that defendant and his grantors were misled by plaintiff's conduct.—State v. Heaphy, Vt., 92 Atl. 813.

44.——Silence.—The silence of children who did not know of their claim to the land as heirs of their mother does not estop them from asserting such claim against grantees under deeds of trust given by their father.—Watson v. Vinson, Miss., 67 So. 61.

45. **Evidence**—Opinion.—In a suit involving the boundaries intended by a timber deed, a question as to whether the grantor understood that a corner mentioned in the deed was the point located by her son and agent, when they showed the property to the grantees, is not improper as calling for a conclusion.—Newton v. American Car Sprinkler Co., Vt., 92 Atl. 831.

46. **Executors and Administrators**—Disbursements.—In an action to recover disbursements for the benefit of an estate, an item for a certain amount of taxes paid could be supported by evidence of different payments of different amounts all tending to make up the sum stated.—Littlefield v. Cook, Me., 92 Atl. 787.

47.——Gratuitous Services.—Where a daughter took her mentally incompetent mother into her home, and rendered her services as a member of the daughters' family, without expectation of compensation, they were not a charge on the mother's estate.—In re Squire's Estate, Iowa, 150 N. W. 706.

48. **Explosives**—Evidence. — Testimony that witness had used kerosene oil for many years in a particular manner held admissible as tending to indicate that the person injured from an explosion of kerosene with which she was starting a fire was not guilty of gross negligence.—Standard Oil Co. v. Reagan, Ga., 84 S. E. 69.

49. **False Pretenses**—Opinion Evidence.—An expression of opinion that the land traded contained ten acres, when, in fact, it contained only five acres, held not to constitute such a false pretense as rendered defendant criminally liable.—Walker v. State, Fla., 67 So. 94.

50. **Ferries**—Abandonment.—The owner of a ferry privilege may not have injunction against infringement, where failing to furnish adequate and safe accommodations, amounting to temporary abandonment of rights.—Crane v. Jackson, Ark., 172 S. W. 890.

51. **Fraudulent Conveyances**—Estoppel.—That a husband, without his wife's knowledge, failed to pay his creditors from the proceeds of a sale of the homestead, as he had agreed, held not such fraud by the wife as subjected her interests in the proceeds of the sale to the claims of her husband's creditors.—McCormick v. Brown, Neb., 150 N. W. 827.

52.——Garnishment.—A buyer in good faith for value is not subject to the trustee process for the value of the property on the ground that the sale was a fraud upon the seller's creditors.—Clough & Parker v. Glines & Stevens Co., N. H., 92 Atl. 803.

53. **Guaranty**—Release from Liability. — A firm, guaranteeing all accounts a corporation might make with a creditor, held discharged from liability because the creditor accepted notes for debts at their maturity, unless the firm consented to the extension of time.—Carson v. J. L. Mott Iron Works, Va., 84 S. E. 12.

54. **Homicide**—Bad Character.—In a prosecution for defendant's murder of her husband, detailed evidence as to her conduct held inadmissible, under the rule that accused cannot be found guilty of the offense charged by proving bad character or other independent specific acts of reprehensible nature.—State v. Brazzell, Iowa, 150 N. W. 683.

55.——Cause of Death.—Where lockjaw, directly causing decedent's death, resulted from knife wounds inflicted by accused, death was caused by the wounds.—State v. Harmon, Del., 92 Atl. 853.

56.——Justifiable. — Homicide is justifiable when committed in the belief based on reasonable ground, that it is necessary to save the slayer from death, or great bodily harm, even though the slayer is mistaken.—Napier v. State, Ohio, 107 N. E. 535.

57.——Self-Defense.—One relying on self-defense must show that he had reason to believe that he was in imminent danger of great physical harm or loss of life at the hands of decedent.—State v. Mulkerrin, Me., 92 Atl. 785.

58. **Homestead**—Forfeiture.—Where a wife, without fault of the husband, voluntarily separates from him and leaves the homestead, which is his separate property or community property, she forfeits her homestead right therein.—Gardenhire v. Gardenhire, Tex., 172 S. W. 726.

59. **Husband and Wife**—Antenuptial Agreement.—Where husband and wife made an antenuptial agreement for the payment of $12,000 by him to her, she relinquishing all rights in his estate, the agreement will be enforced in equity, although the wife separated from him.—Schnepfe v. Schnepfe, Md., 92 Atl. 891.

60.——Community Interest.—A husband cannot defeat his wife's community interest in the real property by a sale thereof made with that intent, of which intent the purchaser had notice.—Gardenhire v. Gardenhire, Tex., 172 S. W. 726.

61.——Survivorship.—The survivor can be sued and property in his hands as such subjected to payment of community debt, but separate estate of the husband, which is also liable for payment of such debt, cannot be reached in suit against surviving wife.—First Nat. Bank of New Boston v. Daniel, Tex., 172 S. W. 747.

62.——Tort of Wife.—Common-law rule as to husband's civil liability for torts of his wife in action where they are joined and charged with conspiring a wrong held not changed by Rev. St. 1909, § 304, authorizing a married woman to sue and be sued without joining her husband.—Aronson v. Ricker, Mo., 172 S. W. 641.

63. **Indictment and Information**—Disjunctives.—Where a statute defines a crime in the disjunctive, it is sufficient to charge the offense in the language of the statute, using the conjunctive unless the words are repugnant, and a part of the substance of the offense.—State v. Curtis, Mo., 172 S. W. 619.

64. **Insurance**—Fraternal Order.—Provisions of constitution of a fraternal order, by the terms of its certificate of insurance constituting material parts thereof, were binding upon the insured and the beneficiaries.—Howton v. Sovereign Camp Woodmen of the World, Ky., 172 S. W. 687.

65.——Mistake.—Policy of burglary insurance, which after delivery was returned for correction of mistakes due to the insurer's agent, held a valid policy, which the insurer could not retain and cancel.—New Amsterdam Casualty Co. v. New Palestine Bank, Ind., 107 N. E. 554.

66. **Judgment**—Dismissal.—In an action for injuries to a passenger riding in a freight car, by reason of a defect therein, while the car was in the possession of a terminal company, dismissal as to the latter did not require a dismissal as to the railroad company.—New York, N. H. & H. R. Co. v. Halstead, U. S. C. C. C. A., 218 Fed. 455.

67. **Landlord and Tenant**—Quiet Use.—A landlord may not, without the consent of the

tenant, place any signboard on the building in such a way as to interfere with the quiet use of the property by the tenant.—Reynolds v. Clark, Del., 92 Atl. 873.

68.—**Libel and Slander**—Privilege.—Where a person, to whom an inquiry as to a servant's character is made, answers that he has information as to a fact, as distinguished from a statement that the fact exists, his privilege does not depend on whether he in good faith believes the fact.—Doane v. Grew, Mass., 107 N. E. 620.

69. **Limitation of Actions**—Estoppel.—Surety on contractor's bond, who mistakenly represented to materialman that he was liable for materials, held not estopped from pleading limitations in action for such false representations, and limitations ran from the time the materialman saw or might have seen the bond.—Dean v. A. G. McAdams Lumber Co., Tex., 172 S. W. 762.

70. **Master and Servant**—Abrogation of Rules.—A rule for the protection of employes may be abrogated by a general custom built up within the knowledge of those whose duty it is to enforce the rule or to report infractions thereof.—Chicago, R. I. & P. Ry. Co. v. Smith, Ark., 172 S. W. 829.

71.——Assumption of Risk.—Plaintiff engaged in knapping rock, held not to have assumed the risk of being struck by a piece of rock knocked down or rolled down while a fellow servant, under their foreman's direction, was breaking rock on a slope behind him.—Burton Const. Co. v. Metcalfe, Ky., 172 S. W. 698.

72.——Change of Employment.—Where, in an action for salary, plaintiff had testified to a change of his employment, it was error to refuse to allow a witness for defendant to state the extent of the extra work which plaintiff testified had been imposed upon him.—Tampa Drug Co. v. Berger, Fla., 67 So. 97.

73.——Change of Relation.—Fact that the regular employe who was sick, hired plaintiff as a substitute, receiving his own regular wages, held not to change plaintiff's relation to master, who owed him the same duty as if its manager had employed him.—Garretson-Greeson Lumber Co. v. Goza, Ark., 172 S. W. 825.

74.——Licensee.—One employed by a railroad who uses a certain spot along the track selected by himself and of a known dangerous character has the rights merely of a licensee, and takes his own risk.—Connell v. New York Cent. & H. R. R. Co., N. Y., 107 N. E. 568.

75.——Safe Place.—Where the servant works in a place necessarily rendered dangerous by some independent work of the master, the master must control the independent work while the servant is so engaged—Arveson v. Boston Coal, Dock and Wharf Co., Minn., 150 N. W. 810.

76.——Volunteer.—That decedent's services were being given at the request of an assistant to another employe in charge of the work and not by the other employe himself held not to render decedent a mere volunteer.—Hitchcock v. Artic Creamery Co., Iowa, 150 N. W. 727.

77. **Mechanics' Liens** — Commencement of Suit. — The commencement of a suit by a materialman within 90 days after the last material is furnished fixes a lien against the owner's property and dispenses with the necessity of 10 days' notice to the owner of an intention to claim a lien and the filing of the account upon which it is claimed with the circuit clerk.—Simpson v. J. W. Black Lumber Co., Ark., 172 S. W. 883.

78. **Monopolies**—Restraint of Trade.—The fact alone that a manufacturing corporation has largely increased its business by purchasing the plants and business of other concerns does not effect an undue restraint of trade, within the meaning of Sherman Anti-Trust Act, §§ 1, 2.—United States v. Keystone Watch Case Co., U. S. D. C., 218 Fed. 502.

79 **Mortgages**—Collateral Security.—A creditor secured by a deed of trust who holds a deed of trust on other land as collateral must first exercise his remedy under the original deed before proceeding under the deed as collateral.—Winter v. Humble, Ark., 172 S. W. 849.

80. **Municipal Corporations**—Abutting Owner.—A municipality may enforce a lien against an abutting owner for sidewalks, though it had the work done by a foreign corporation not registered as required by Acts 1907, c. 5717.—Campbell v. Daniell, Fla., 67 So. 90.

81.——Charter Powers.—Municipal corporations may acquire real and personal estate by gift, bequest, or devise for the purposes of their creation, and a gift unqualified in its terms will be limited to such purposes.—Cramton v. Cramton's Estate, Vt., 92 Atl. 814.

82.——Civil Service Law.—Civil service law does not confer power on the state civil service commission to investigate the conduct of a mayor of a city with reference to his enforcement of the civil service law.—Green v. State Civil Service Commission, Ohio, 107 N. E. 531.

83.——Contributory Negligence.—One injured in a collision between an automobile and a bicycle could not recover, unless defendant was negligent and he was free from negligence proximately contributing to the accident.—Travers v. Hartman, Del., 92 Atl. 855.

84.——Street Improvement.—Fact that the foundation was approved by engineer without objection by contractor that foundation used would impose burden which he had not agreed to assume held not to relieve him from liability under maintenance bond to repair defects resulting from such foundation.—English v. Shelby, Ark., 172 S. W. 817.

85.——Joint Tortfeasors.—Where a railroad company constructs its road over a city street under a permit from the city, a person injured by its negligence may recover from thecity or the company, or both.—Cushman Motor Works v. City of Lincoln, Neb., 150 N. W. 821.

86.——Street Assessments.—The extension of time for the completion of street paving as authorized by the contract does not invalidate the assessments therefor unless unreasonable.—F. M. Hubbell, Son & Co. v. City of Des Moines, Iowa, 150 N. W. 701.

87.——Vacating Streets.—Municipalities exercising the power to vacate streets must do so within the constitutional limitation that their acts must be for some public use, but their motives cannot be judicially investigated.—City of Indianapolis v. Maag, Ind., 107 N. E. 529.

88. **Navigable Waters** — Riparian Rights. — Title to the water of the river above tide and between the termini of the James river and the Kanawha canal is vested in the commonwealth and its grantees, and not in its riparian proprietors.—Grant v. Chesapeake & O. Ry. Co., Va., 84 S. E. 9.

89. **Negligence**—Highway.—One using a traction engine along a public road must use the care a reasonably prudent and careful person would use to prevent burning property along the road.—Cecil v. Mundy, Del., 92 Atl. 850.

90. **New Trial**—Grant of.—Where the leading averments of a complaint showed that title was only incidentally involved, and that the real question was the location of a boundary and right to injunctive relief, defendants were not entitled to a new trial as of right.—Nesbit v. English, Ind., 107 N. E. 552.

91. **Nuisance**—Election.—One who assisted a city to construct a dam, and thereafter purchased land thereby flooded, cannot elect to treat the dam as a nuisance and have it abated.—Irvine v. City of Oelwein, Iowa, 150 N. W. 674.

92. **Parent and Child**—Damages. — Father, whose son was injured through defendant's negligence, held entitled to reasonable compensation for expenditures for medicines and medical attendance, and for permanent loss of services during minority, if any.—Travers v. Hartman, Del., 92 Atl. 855.

93. **Partnership**—Joint and Several Liability.—Where members of a firm signed a note individually, with nothing on its face to indicate that it was a firm obligation, they bound themselves individually, though the money borrowed was used for the firm's benefit.—In re Robson, U. S. C. C. A., 218 Fed. 452.

94.——Test of.—Under Civ. Code 1910, § 3158, a contract stipulating merely that one contract-

ing party should receive as compensation for services one-half of the profits of the business held not a contract of partnership.—Falk v. La Grange Cigar Co., Ga., 84 S. E. 93.

95. **Railroads**—Look and Listen.—Plaintiff stopping at a crossing listening for a train but hearing none, relying on a custom to give a signal, who, had he looked, could not have seen train, held not bound, as a matter of law, to look up or down the track.—Doody v. Boston & M. R. R., N. H., 92 Atl. 801.

96.——Warning.—If platform between two tracks, on one of which train was standing, was unusually dangerous, company held bound to use some reasonably effective means of warning those on the platform that another train was approaching.—Louisville & N R. Co. v. Senney's Adm'r., Ky., 172 S. W. 683.

97. **Receiving Stolen Goods**—Evidence.—In a prosecution for receiving one stolen pool ball, testimony that the accused at about the same time received other balls from the same person is admissible to show knowledge.—Henderson v. State, Tex., 172 S. W. 793.

98. **Removal of Causes**—Removability.—A suit by a city to restrain a telegraph company from doing intrastate business in the city without having paid a license tax imposed by a city ordinance, for violations of which it was subject to a fine of not less than $10 nor more than $100 for each day it did business in violation of the ordinance, held not a "suit of a civil nature," and therefore not removable to the federal court.—City of Montgomery, Ala., v. Postal Telegraph-Cable Co., U. S. D. C., 218 Fed. 471.

99. **Sales**—Evidence.—Where a contract of sale was signed only by the buyer, but the oral agreement was proved by the testimony of the seller, the admission of evidence of interviews and negotiations which resulted in the sale and delivery to the buyer was not erroneous.—Ney v. Wrenn, Va., 84 S. E. 1.

100.——Guaranty.—Whether guaranty on sale of stallion that was a sure breeder, and that if not he might be returned at a date too early to test his breeding qualities, was unreasonable, held for court and not for jury.—Holland Banking Co. v. Hearn, Ark., 172 S. W. 881.

101.—Passing of Title.—Where a seller has done all required of him, and the counting, weighing, testing, etc., to ascertain the price must be done by the buyer, title passes, unless a contrary intention appears.—G. I. Frazier Co. v. Owensboro Stave & Barrel Co., Ky., 172 S. W. 652.

102.——Standing Timber.—Under contract to sell standing timber of specified size to be inspected and branded by purchaser's agents, purchaser held not bound to take trees of smaller size branded by its agents.—Ellswick v. Yellow Poplar Lumber Co., Ky., 175 S. W. 675.

103.——Warranty.—A warranty that cantaloupes "to be shipped" are "free of split ends and not over-ripe" is complied with where the melons are in the warranted condition when delivered to the railroad.—Williams-Thompson Co. v. Marshburn, Ga., 84 S. E. 90.

104.——Warranty.—A buyer, having elected to allow a seller to make good his warranty by repairing defective furniture, cannot after the destruction of the article sue upon the warranty. —Hanes v. Shapiro & Smith, N. C., 84 S. E. 33.

105. **Specific Performance**—Third Party.—Where a suit was brought in a foreign court to compel specific performance of a contract by plaintiff to purchase certain land, a judgment against plaintiff did not authorize a bank in which part of the price was deposited, and which was not a party, to pay over the money to the vendor.—Banco Minero v. Ross, Tex., 172 S. W. 711.

106. **Street Railroads**—Contributory Negligence.—Where a traveler driving in front of an approaching car was guilty of contributory negligence, the street railway company was liable only for failure to use ordinary care after discovering the peril.—Bain v. Ft. Smith Light & Traction Co., Ark., 172 S. W. 843.

107. **Subrogation**—Mortgage.—A purchaser of mortgaged property held entitled, under an agreement with the mortgagor, to be subrogated to the rights of the mortgagee whose mortgage he had paid, as against a prior judgment of which he was ignorant.—Peagler v. Davis, Ga., 84 S. E. 59.

108. **Sunday**—Reception of Verdict.—It is not unlawful to receive a verdict and impose sentence after midnight on Saturday and before sunrise of Sunday.—Barnes v. State, Fla., 67 So. 131.

109. **Taxation**—Constitutionality.—Act March 31, 1914 (P. L. p. 141), providing that taxation of bank stock, held not to violate the uniform rule of the Constitution because it imposes on the true value of the property a uniform rate. —Commercial Trust Co. of New Jersey v. Hudson County Board of Taxation, N. J., 62 Atl. 799.

110. **Telegraphs and Telephones**—Notice.—Where plaintiff was sick and telegraphed for a conveyance, a statement to him by defendant's agent an hour thereafter that the telegram had been delivered held admissible on the issue of notice of the importance of the message.—Young v. Western Union Telegraph Co., N. C., 84 S. E. 45.

111. **Tenancy in Common**—Adverse Possession.—One cotenant does not acquire the interests of the others by adverse possession, in the absence of a showing that he repudiated the cotenancy or ousted the other tenants therefrom. —Watson v. Vinson, Miss., 67 So. 61.

112. **Trade-Marks and Trade-Names**—Unfair Competition.—A person may seek a competitor's business, and tell the trade not to buy of his competitor, so long as he indulges in no harassing methods.—Victor Talking Mach. Co. v. Lucker, Minn., 150 N. W. 790.

113. **Trial**—Instructions.—An instruction, in an action for injuries to a traveler in a collision with a street car, held not to charge that plaintiff was guilty of contributory negligence as a matter of law.—Bain v. Ft. Smith Light & Traction Co., Ark., 172 S. W. 843.

114. **Trusts**—Election of Remedy.—Where a contract creates a trust, and plaintiff is entitled to have same executed by the trustee's turning over to him for life the corpus as a trust estate to be safely guarded, held, that he should institute appropriate proceedings, and not sue on the entire contract, and at the same time ask for a money judgment.—Rounsaville v. Rounsaville, Ga., 84 S. E. 64.

115.——Parol Evidence.—Where a testator has formed an intention that a legacy shall be disposed of by the legatee in a manner communicated to the legatee and assented to by him at or before or possibly subsequent, to the will, the court will allow the trust to be proved by the legatee or other parol evidence.—People v. Schaefer, Ill., 107 N. E. 617.

116. **Vendor and Purchaser**—Constructive Notice.—A person acquiring title to land with constructive notice of the actual possession of the land by one other than the vendor or judgment debtor takes subject to such rights of the occupant as a proper inquiry would have disclosed. —Carolina Portland Cement Co. v. Roper, Fla., 67 So. 115.

117. **Wills** — Cross-Remainders. — Cross-remainders are remainders limited after particular estates to two or more persons in several parcels of land, or in several undivided shares in the same parcel of land, so that, on the determination of the particular estates in any of the several parcels or undivided shares, they remain over to the other grantees, and the reversioner or ulterior remainderman is not let in till the determination of all the particular estates.—Addicks v. Addicks, Ill., 107 N. E. 580.

118.——Devise.—A devise of part of the residue of an estate after the death of beneficiaries to the town of T forever, and, if the beneficiaries pre-deceased testator, to the town of T direct, without specifying the use to which it was to be put, was valid.—Cramton v. Cramton's Estate, Vt., 92 Atl. 814.

119. **Witnesses** — Cross-Examination. — On cross-examination of a witness, held that documentary evidence not otherwise admissible could be received to show under what authority the witness claimed to act for the defendant insurer. —Schworm v. Fraternal Bankers' Reserve Society, Iowa, 150 N. W. 714.